the plaintiff in an action by the adverse claimant would have to offer any evidence to overthrow the latter's claims.[5] The unfortunate result of such a distinction can best be shown by an illustration. If the plaintiff and the defendant both claim under a deed from the same grantor, the defendant's deed, although subsequent to that of the plaintiff, is a cloud, because the plaintiff, were his title attacked, would have to introduce evidence of the record. But if the defendant's deed is a forgery, or proceeded from a person outside the chain of title, the instrument, although valid upon its face, would not be a cloud, because these facts must necessarily appear and destroy the claimant's case without any proof on the part of the plaintiff. Since one claim may detract as much as the other from the value of the plaintiff's property, such a rule must often work injustice. Both the New York and the California doctrines lead to the extraordinary result of a defendant in a suit to quiet title arguing that his claim is invalid, and that he should therefore be left in undisturbed possession of it.[6]

Since the basis of this jurisdiction is to clear the plaintiff's title from claims which render it less marketable, the question should be not whether a claim fulfils certain technical requirements, but whether it is of a character to frighten away the average purchaser. In other words, if the claim is of sufficient magnitude materially to affect the market value of the plaintiff's property, it should be removed, or its creation enjoined.[7] Upon this analysis it would seem that the Supreme Court of Washington rightly allowed a bill to quiet title against a defendant who apparently had but an oral claim. *Morgan & Co.* v. *Palmer*, 79 Pac. Rep. 476. It must be admitted, however, that the authorities have not gone so far.[8]

CONDEMNATION BY ELECTRIC POWER COMPANIES. — In every action for the condemnation of land two questions must be determined, — first, whether it is wanted for a public use, and second, whether that particular land is required. Ordinarily the second question presents no difficulties. When a highway or railway is to be laid out, a considerable discretion must necessarily be given as to the particular route to be followed, and when that is once determined, the necessity of taking any given piece of land arises from its physical location upon this selected route. The same principle is involved in other cases. Thus in the days of the flowage acts for public water-mills, the proximity of a water-fall made the adjoining land necessary from its very location. The same is, perhaps, true regarding the land, other than the right of way, which is required for the operation of a steam railway. Such things as round houses and repair shops must be near the road, and a reasonable discretion has always been permitted in locating them in cities and towns where they can be used conveniently. Very evidently, however, there must be a point where the necessity for any particular land ceases and the mere convenience of the condemning company begins.

This consideration becomes of greater importance where land is condemned by electric power companies. Although as to the right of way for

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[5] Pixley *v.* Huggins, 15 Cal. 127.

[6] 3 Pomeroy, Eq. Jur., 2d ed., § 1399.

[7] Bishop *v.* Moorman, 98 Ind. 1.

[8] Parker *v.* Shannon, 121 Ill. 452. But see City of Lafayette *v.* Wabash R. Co., 28 Ind. App. 497, holding, under a statute, that the plaintiff need not describe the defendant's claim.

their lines and tracks, and as to the location of their barns and repair shops, such companies are governed by the same principles as steam railroads, yet because of the ability to transmit power such great distances, it seems difficult to say that any particular land is necessary for the location of steam power-houses. That was the decision in a Rhode Island case, where a company operating three distinct lines of track sought to locate a central power station about equidistant from them all. There was nothing in the location of the land desired which made it necessary to any greater degree than much other land equally favorably situated, and the court held that under such circumstances the company should be required to purchase as any private individual.[1] The fact that there was abundant land available prevented any possibility of combination against the company, and since that is generally the case, it seems that the instances in which any particular land is necessary for such purposes must be extremely rare. The argument for any special location will usually amount to nothing more than the convenience of the company, or at the most its ability to serve the public more cheaply. Economy, however, because of the large number of elements entering into any computation of it, must always remain an extremely unsatisfactory ground upon which to base condemnation proceedings, even if principle would permit the taking of land without consent for such a reason. Certainly there is no more basis for allowing condemnation in these cases than for allowing a common expressman between two towns to condemn land for a stable. Although the land is desired for a public purpose, that particular land is not necessary.

In view of these considerations, the criticism of the Rhode Island decision contained in a recent New Hampshire case is unfortunate, particularly as the latter case had to decide only that the land was wanted for a public purpose. The fact that it was required to complete the right of way for the company's wires showed clearly that that particular land was necessary. *Rockingham, etc., Co.* v. *Hobbs*, 72 N. H. 531.

VALIDITY OF TRUSTS WHERE TRUSTEE IS DIRECTED TO CHOOSE THE CESTUI. — Future equitable estates, like future legal estates, may be subject to any limitations which do not violate the rule against perpetuities.[1] The *cestui que trust* may be changed by the happening of any prescribed contingency, for example, upon one's changing his name or ceasing to live in a certain house, upon the birth of a child,[2] or upon appointment by a person designated in the instrument.[3] But in the very nature of things there can be no trust without a *cestui que trust*.[4] Therefore, when an instrument showing that the holder of the legal title is not to take beneficially fails to indicate *cestuis que trust* for the entire equitable interest, equity raises a resulting trust for the grantor or his representatives, although it is expressly stated that the heirs shall not take.[5] Likewise where property is devised on trust to build a monument, to take care of animals, or to pay for masses,

[1] *In re* Rhode Island, etc., Co., 22 R. I. 457.

[1] Gray, Perpetuities § 66.
[2] *Ibid.* § 61.
[3] Townshend *v.* Windham, 2 Ves. 1, 9.
[4] Y. B. 7 Ed. IV. 16, 17 b, *per* Brian, J. — In a feoffment to the use of the plain of Salisbury or the moon, the use is void. See 15 HARV. L. REV. 512.
[5] Fitch *v.* Weber, 6 Hare 145.